

Admitting Evidence

Angela K. Andrews
Maricopa County Attorney's Office



Most Important



Get the evidence to court!

Most Important

- Don't assume case agent knows to bring evidence
- Schedule a time with the clerk and case agent to mark evidence
- Make sure all evidence is packaged appropriately
- Make sure weapons are secure
- Check evidence to make sure it is the right evidence and the complete evidence
- Check the chain of custody

MOST IMPORTANT

- Photographs
- Physical Evidence
 - Drugs
 - Guns
 - Clothes
 - Weapons/ammo/casings/bullets
 - Other objects

Main Types of Evidence

- Photographs



- Drugs



- Guns



- Clothes



- Weapons





- Other Objects



- Videos/Audio
- 911 Calls
- Documents
 - Bank Records
 - Cell phone Records
 - Computer Records
 - Business Records
 - Priors
 - Social Media
- Demonstrative Evidence

Main Types of Evidence

- Show to the defense attorney and identify for the record
- Ask to approach the witness
- Show the witness the exhibit and identify for the record
- Ask the witness if, and how, they recognize the exhibit
- Admit
- Publish

Basics of Admitting Evidence

- How to admit: "Fair and accurate representation"
- You don't need the photographer
- Need someone who saw the scene on the relevant day
- Admitting numerous photos of the same location

Photos

Two Separate issues...

1. Witness unable to identify exhibit by visual appearance
2. Witness able to identify exhibit by visual appearance

Physical Evidence

Witness unable to identify by visual appearance

- Establish chain of custody
 - A party seeking to authenticate evidence based on a chain of custody “**must show continuity of possession**,” but it need not disprove every remote possibility of tampering.” *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996). Furthermore, “[a party] need not call every person who had an opportunity to come in contact with the evidence sought to be admitted.” *State v. Hurles*, 185 Ariz. 199, 206, 914 P.2d 1291, 1298 (1996). – *State v. McCray*, 218 Ariz. 252, 183 P.3d 503 (2008)

Physical Evidence

Physical Evidence

(Witness can't recall)

- Identify with distinct markings
 - Defendant's name
 - Date that the evidence was collected
 - Officer's signature or initials
 - Officer's badge number
 - Police report number
 - Explain that the report number is unique
- Explain what “impounding” means
- Don't have to call everyone person who came into contact with the evidence
- Admit once the chain has been established

Witness able to identify by visual appearance

- “Same or substantially similar condition...”

Physical Evidence

- ⦿ How to admit: Similar to photos
- ⦿ Two scenarios:
 - Witness present at time and location that video was recorded, or
 - No witnesses present when video was recorded
- ⦿ Witness present
 - Fair and accurate representation
 - Caution: Is there a part of the video where the witness wasn't present?

Videos

- ⦿ No witness present
 - Qualified witness needed:
 - What type of system?
 - How does it record ?
 - When does it record?
 - How is the video saved?
 - Who obtained the video?
 - Was the system working properly when the video was picked up?
 - Was the video reviewed?
 - ⦿ When reviewed was there anything to suggest that the video didn't record properly?
 - ⦿ If witness is familiar with the scene, does the video fairly and accurately reflect that location?
 - ⦿ Finally, chain of custody.
 - ⦿ But before all that, talk to the defense

Videos Continued

- Redact the copy from police department
- Tell defense attorney about redaction
- Have victim/witness listen beforehand
- Lay foundation before admitting
 - Present sense impression
 - Excited Utterance

A.R.S. § 13-3989.01

911 Calls

- ⦿ How to admit: Certify and establish relevance
- ⦿ Certified Document
 - ⦿ Priors or Bank Records A.R.S. § 13-1812
 - Have a witness establish relevance
- ⦿ Uncertified Document
 - Need a custodian or other qualified witness to show document was:
 - Made at or near the time of the occurrence
 - Made as part of the regular practice of that business activity
 - Kept in the ordinary course of regularly conducted business activity

Documents

- Used for uncontested issues
- Can be helpful to move the case along more quickly
- Does the stipulation help your case?
- If not, don't accept a stipulation
 - Fracture example

Stipulations

- Review for redactions
- Communicate with defense counsel
- Have a court hearing if necessary
- Complete redactions prior to trial

REDACTIONS

- Show the jury how guilty the defendant is
- Photos
 - Use projector
 - Three pass method
- Video
 - Review for specific times
- Documents
 - Have the witness read
- Physical Evidence
 - Have the witness show the jury

What to do after evidence is admitted:

Court Clerk #	MSJ #	Item of Evidence	Admissibility	Witnesses	Item admitted?
1	1	Typewritten address re: Judge Roberts	Yes	Officer Frank Smith	
2	2	Typewritten address re: Judge Roberts	Yes	Officer Frank Smith	
3	3A	Envelope to Moss Crime Center	No except chain of custody	Witness Sally Jones	
4	4B	Typewritten address re: Judge Roberts	Yes	Victim Judge Roberts	
5	5	(2) Typewritten address re: Judge Roberts	Yes	Victim Judge Roberts	
6	6	Envelope with contents from LBN to Judge Roberts with Polaroid (4) found at US forest service	Yes	Witness Edna Johnson	
7	7A	Video cassette from surveillance tapes at Moss Youth Museum	No	Witness Jane Clark	
8	8B	Letter addressed to Judge Roberts Polaroid found at Moss Youth museum plus back page	Yes	Witness Jane Clark	
9	9	Envelope addressed to Judge Roberts w/ Polaroid and mobile telephone message	Yes	Witness Joe Palmer Detective Steve Miller	
10	10A	Same as 20 D	Maybe - see motions re: reconsider	Witness Joe Palmer Detective Steve Miller	
11	11B	Front side of app to AZ outdoor journal	Yes - see motions re: reconsider	Victim Judge Roberts	
12	12C	Back side of app to AZ outdoor journal	Yes - see motions re: reconsider	Victim Judge Roberts	
13	13A	Letter re: Judge Roberts app to Transamerica Life	No		

EVIDENCE CHART

- Foundation
 - Also, we note that where a partial foundation exists, it is incumbent upon the objecting party to specify what foundation is lacking so that the introducing party may address the issue. See *Packard v. Reidhead*, 22 Ariz.App. 420, 423, 528 P.2d 171, 174 (1974). While defendant made a foundation objection at trial, he did not indicate what foundation was lacking. - *State v. Rodriguez*, 186 Ariz. 240, 921 P.2d 643 (1996)
- Chain of Custody
 - Detective Rea described from personal knowledge the chain of custody of the fluid samples from their collection at the autopsy to their delivery to DPS. To the extent his recollection of the events was incomplete or conflicted with testimony by other witnesses, these concerns go to the weight rather than the admissibility of the evidence. See *State v. Gonzales*, 181 Ariz. 502, 511, 892 P.2d 838, 847 (1995). The trial judge did not abuse his discretion in admitting the DNA evidence. - *State v. McCray*, 218 Ariz. 252, 183 P.3d 503 (2008)

Two Common Defense Objections

- Relevance
- Hearsay
- Authentication and Identification
- Contents

OTHER OBJECTIONS

- ☐ Get the evidence to court
- ☐ Have a plan
- ☐ Admit the evidence
- ☐ Show it to the jury
- ☐ Explain what it is
- ☐ Check to make sure everything is admitted before resting
- ☐ Make sure the right evidence goes back to the jury

Checklist
